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In re Application of :
CHOATE, Gary, E., et al :
U.S. Application No.: 09/831,131 : COMMUNICATION
PCT No.: PCT/US00/27754 :
International Filing Date: 06 October 2000 :
Priority Date: 07 October 1999 :
Attorney's Docket No.: 600-3001 :
For: CONFINED SPACE ENTRY DEVICE AND :
RELATED METHOD OF ASSEMBLY :

This application is before the PCT Legal Office for issues arising under 35 U.S.C. 371.

BACKGROUND

On 06 October 2000, applicant filed international application PCT/US00/27754 which claimed a priority date of 07 October 1999 and which designated the United States.

On 04 May 2001, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of the basic national fee was extended to expire thirty months from the priority date, i.e., 08 April 2002 (07 April 2002 was a Sunday).

On 04 May 2001, applicants filed a Form PTO-1390 Transmittal Letter for entry into the national stage in the United States. Although it was the first national stage filing, the Transmittal Letter identified itself as a "SECOND or SUBSEQUENT submission." The Transmittal Letter did not include an express request to begin national examination procedures. The Transmittal Letter, which included an authorization to charge Deposit Account No. 50-0695 for necessary fees, was accompanied by, among other materials, a check for \$100 (identified as the required basic national fee).

On 13 December 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements indicating that an oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than thirty months from the priority date were required.

On 10 January 2002, applicant submitted via facsimile a copy of the previously filed Form PTO-1390 Transmittal Letter which had been modified so that it was identified as a "FIRST submission." This corrected Form PTO-1390, accompanied by a copy of the Demand, still did not contain a request to begin national examination procedures.

DISCUSSION

As set forth above, applicants here never made an express request to begin national examination procedures. Accordingly, national examination of this application should not have commenced until thirty months after the priority date, i.e., 08 April 2002. The Notification Of Missing Requirements mailed on 13 December 2001, being as it was prepared prematurely, is therefore appropriately vacated.

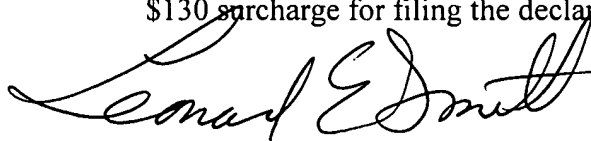
The proper basic national fee for this application is \$710, not the \$100 indicated by applicants in the Form PTO-1390. Accordingly, based on applicant's authorization and in order to avoid abandonment, Deposit Account No. 50-0695 has been charged \$610 (the difference between the \$100 submitted and the \$710 due).

CONCLUSION

Based on the above, the Notification Of Missing Requirements mailed 13 December 2001 is hereby **VACATED**.

Deposit Account No. 50-0695 has been charged \$610 to bring applicants' fee payment to a total of \$710, such amount representing the proper basic national fee.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing, including the mailing of a new Notification Of Missing Requirements requiring submission of a declaration in compliance with 37 CFR 1.497 and the \$130 surcharge for filing the declaration later than thirty months after the priority date.



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